and have afterwards, upon an examination of the question of election, ousted that man, and put in another. Therefore, sir, it is perfectly competent to the Senate, if they choose, to refer not only the question of election, but the question of credentials, to the committee which it is proposed to raise. And, sir, there is a question of credentials. The one Senator presents credentials founded upon the action of the Legislature. Another has presented a certificate, which, it is contended here, extends beyond and does constitute a credential, for the whole term, until another Legislature shall elect. So that there is a question as to credentials; and it seems to me perfectly proper and perfectly consonant with previous precedent to refer that question, as well as the other, to a select committee of the Senate, if the Senate should determine to raise one. My only object was to get along with the public business, and get rid of any embarrassment in the mode of getting at the question. It seems to me that the best mode would be, by unanimous consent, to drop Mr. Meriwether's name from the roll, and belet the whole matter be referred to a committee for examination. and have afterwards, upon an examination of the ques-

Mr. BRIGHT. I apprehend that if Mr. Meriwether were in his seat he would not be entitled to vote in this were in his seat he would not be entitled to vote in this case, upon general parliamentary principles. It is a matter in which he is directly interested; and every principle of parliamentary law excludes a member, situated as he is, from voting on such a question. He is absent, for two reasons: A sense of delicacy would prevent his occupying a place to which he believes he is entitled under the circumstances that surround this case. under the circumstances that surround this case; and it is due to him to say that he is not claiming this place. He sets up no claim to it. I understand him to occupy this attitude: that if he be declared entitled to it under an order of the Senate, carrying out the Constitution accordarwise. I believe that he is now the sitting member. and as such would be entitled to vote upon ordinary sub-jects—upon any other business than that which directly interests him. But in this case, I apprehend, he would not be entitled to vote. I will read from Jefferson's Manual on this point; for I believe the general principles laid down by parliamentary authors are in force in the Senate, and are observed here:

"Where the private interests of a member are cone in a bill or question, he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule, of immemorial observance, should be strictly adhered to."

As I said before, if Mr. Meriwether were now in his seat he would not be entitled to vote; therefore it is a waste of time to discuss that question.

The PRESIDENT. But that will not prevent his name

being called unless the Senate make some order to the ontrary.

Mr. BRIGHT: As a matter of course his name will be called if it be upon the roll; but he cannot vote on

Mr. CLEMENS. The Senator from Virginia misunderstands me and misunderstands the question before the Senate. The question now pending is not upon the resotee, but it is upon the amendment submitted by the Senator from North Carolina, (Mr. Mangum,) that in the mean time Mr. Dixon be sworn in as a member of this body. Therefore I say that the decision of the question, whether Mr. Meriwether's name be called or not, determines my vote. If Mr. Meriwether presents no prima facie case, if his name is blotted from the roll of the Senate, then the gentleman presenting credentials is en-titled to be sworn in, and I shall vote to have him sworn in. But if Mr. Meriwether claims to be a member of the Senate, he has the prima facie case, and the other gentleman is not entitled to be sworn in. This point brings up the whole case. Its decision settles my vote at all events.

The PRESIDENT. The Chair will be governed by the

disposition of the Senate in this matter.

Mr. CASS. I take it for granted that if the clerk proceeds to call the roll, and comes to the name of Mr. Meri-wether, and the calling of his name is objected to, it will bring up the whole question. The roll new stands pre-cisely as it did on the last day of August, when we adjourned. If Mr. Meriwether's term has since expired, there is an end to the question before the Senate.

The PRESIDENT. Unless it is otherwise ordered, the Chair will direct the roll to be called, with a perfect understanding on the part of the Senators that the Secretary shall call the name of Mr. Meriwether.

Mr. CLEMENS. If so, I have no objection to the roll

to it. I shall wish to ascertain whether he is a member of the Senate, and that will raise the whole question. I think it better to settle the matter before the roll is called.

The PRESIDENT. It will certainly be much better to decide before the control of the senate, and that will certainly be much better to decide before the control of the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention, as the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention, as to the right of the gentleman who offers credention. I intimated yesterday that it seemed to me that there was no necessity for a reference to a committee; that there

unfavorable to truth. The result will be that we shall have the decision first and the discussion afterwards.

Mr. CASS. There seems to be no help for it. Mr. BUTLER. If the honorable Senator from Alabama should object, as he intimates that he will, it will bring up the whole question. I confess that for one I am like My vote will depend very much upon the question of whether Mr. Meriwether is or is not entitled to be call-

Mr. MANGUM. I would inquire how the name of Mr. Meriwether comes to be upon the roll? The making out of the roll is a mere clerical duty; and if the Secretary confines himself to the mere prima facie case upon the certificate the name of Mr. Meriwether could not be upon the roll. I would therefore inquire by what authority that name is upon the roll?

The PRESIDENT. The authority is very apparent. Mr. Meriwether was a member of the Senate at the last session. His name appeared on the list of Senators as such, and there is no decision made that he is not entitled to his seat at this session. That is the question now pending, and until that is decided the Secretary has no but to keep his name upon the list. fore it was that the Chair brought the matter to the attention of the Senate, with the hope that they would take immediate action without prejudicing the claim of either of the gentlemen, so as to get clear of the difficulty, and by general consent let the name be passed over for the present, which would not prejudice Mr. Meriwether or any one else; and that was the suggestion of the Senator

would be in order to move, in answer to the suggestion of the Presiding Officer, that the Secretary be directed, in calling the roll on the present occasion, to omit Mr. Meri-wether's name? If that motion is in order it will meet the whole difficulty, and answer the object of the Senator

The PRESIDENT. That can be done by general con-

Mr. HUNTER. If it be done by general consent we reserve Mr. Meriwether's right; but if his name be stricken off by order of the Senate his right would seem to be

Mr. CASS. The proposition suggested by the Senator from Ohio would not remove the difficulty. It still brings up the old question before us. Mr. HUNTER. I think I was not precisely under-

stood in the suggestion which I made. This case, if I understand it in its present position, assimilates itself more nearly to the case of a double return than any other in relation to which we have precedents. Suppose two members present themselves, each with a return. In such a case, would we swear either of them in? No, sir; but we would refer the matter to a committee to see which of them was entitled to the return—to see which had the right return; and until then neither of them would be sworn. It seems to me that it would be regular and legitimate to refer this whole question to a committee, be-cause, as it now stands, it assimilates itself more nearly to a case of that sort than to any other. One party maintains that the certificate which Mr. Meriwether did present, although limited by the Governor, was yet in fact a return, or an appointment up to the time when another Legislature, or the same Legislature at a subsequent meeting, should elect. Another portion of the Senate believe that it was no return—that the only return for the present vacancy is that presented by the member who has credentials under the authority of the Legislature. It is, therefore, a dispute in relation to the very question of return—a dispute which is eminently fitted for a committee to examine and to settle; and it was for that reason that I proposed that, by general consent, without pretending to decide the question now, the whole subject should be referred to to a committee-not merely the question of

Mr. GWIN. Mr. President, if a resolution be offered that when the Secretary comes to the name of Mr. Meriwether he shall call it as a member of the Senate, will it

not bringup the whole question?

Mr. BUTLER. That is the question now pending.
The PRESIDENT. The suggestion of the Senator from Virginia was, that, by unanimous consent, the name of Mr. Meriwether should be passed over for the present. Mr. GWIN. I am in favor of that, if it can be done. The PRESIDENT. Does the Chair hear any objection

Mr. GWIN. The Senator from Alabama said he would

ject to calling the name. Mr. MILLER. What is the proposition?

The PRESIDENT. The proposition is, that, in order to get clear of any difficulty, the name of Mr. Meriwether, by unanimous consent, be omitted in the present call.

Mr. CLEMENS. That is the very question which involves me in difficulty. If we consent to that, I must vote for the amendment. If Mr. Meriwether is claiming the seat, I insist that he has a prima facic title; because I admit, as contended by his friends, that, under ordina ry circumstances, the Governor had no right to limit

ry circumstances, the Governor had no right to limit him: therefore, I say, he has the prima facie title, if he does not himself acknowledge that he is out. If he is out, then we must swear in the man presenting a prima facie claim. That is the very point which I wish to ascertain before I vote.

Mr. MASON. I have no disposition in the world to throw difficulties in the way of the inquiry which must be made, but I cannot agree with the suggestion of my colleague to omit the name of this gentleman from the roll. The question undoubtedly stands thus: Mr. Meriwether took his seat at the last session under a commission from the Governor of Kentucky, which was valid, and his name must remain upon the roll until it is stricken from it by competent authority. Now, the question arises—and it is a very direct one—whether Mr. Meriwether is or is not a Senator. If he be a Senator, we have no right by any consent to strike his name from the have no right by any consent to strike his name from the roll. But the Senate can determine, by judicial action, whether he be a Senator or not, because the duty de volves upon them under the Constitution of determinin as to the election, return, and qualification of its mem bers. All three duties are conferred upon the Senate. This is a preliminary question that must be met, I apprehend, at this stage. I submit, therefore, to Senators that it would be better to refer the matter to a select commit-tee to determine directly the question whether Mr. Meriwether is or is not now a Senator. That will determine whether there be or be not a vacancy in the Senate. Mr. Meriwether, of course, can vote upon no question in which he has an interest; but he is, I apprehend, entitled now prima facis to vote upon any question except such as any one is excluded from voting upon by the rules of the Senate. I think, therefore, we should refer to a committee the preliminary question whether there be a vacancy. That question will be included in the inquiry whether that honorable gentleman (Mr. Meriwener) is now a Senator.
Mr. GWIN. In order to meet the question, I have a

resolution which I wish to offer.

Mr. BADGER. I rise to a question of order. We must dispose of the resolution before the Senate before another

can be offered.

The PRESIDENT. The chair is under the impression that the resolution cannot be received, inasmuch as the question pending is on the amendment of the Senator from North Carolina (Mr. Mangum) to the resolution of the

Senator from California.

Mr. BADGER. I think there is some fallacy in the view which has been suggested by the Senator from Virginia, who has just taken his seat. He says that the name of Mr. Meriwether, who was sworn in under a commission of the Governor at the last session of the Senate must continue on the roll until by some competent authority it shall be displaced from it. Now, sir, it will be re-collected that Mr. Meriwether took his seat in the Senate under an appointment, which by the very terms of it was limited to a day which has already expired. It therefore does not follow from the state of the case that Mr. Meriwether is still a member of this body. In order to ascertain that, we have to determine the other questions that are raised upon the credentials of the person elected by the Legislature of Kentucky; so that the whole matter must be decided by the vote which decides any part of it; for if Mr. Meriwether is now a member of this body, then the honorable gentleman who presents credentials, and asks to be sworn, is not a member, and so far as I can see cannot become a member. That brings us back to the question as to the power of appointment of the Governor; as to the effect of the resignation of Mr. Clay to take ef-fect at a future day; and of course involves all the questions that arise upon the decision of the case. It seems to me, then, sir, that there is no preliminary inquiry which we can decide here which will leave the main subject behind. Mr. Meriwether having taken his seat under an appointment which was to expire on the first Monday of September, unless something to the contrary is shown, ceased to be a member on that day. Well, the contrary that is shown is the construction put upon this clause of the Constitution, that his appointment must endure. Now, that involves several serious inquiries, and brings being called; but when his name is called, I shall object us back again, as I remarked, to the original investiga-

decide, before the commencement of the calling of the roll, whether Mr. Meriwether's name shall be called or decide, before the commencement of the calling of the roll, whether Mr. Meriwether's name shall be called or not. It would be very embarrassing to have the call interfered with in the way suggested.

Mr. BUTLER. If we are to have an impartial decision upon these questions on the issue made by the call of Mr. Meriwether's name, many gentlemen will be committed without a full understanding of the subject.

The PRESIDENT. The Chair was aware of that, and therefore it was that he wished the decision of the Senate.

Were no facts to be ascertained making such a reference necessary. Every thing is in possession of the Senate as Senate, upon which any and all the questions involved must be decided. The credentials of both gentlemen show the fact upon their face of a resignation in December, to take effect in the Septamber following; and therefore the way suggested to do so on leading over the discussion that to that point.

Mr. BUTLER. I say that this is a form of a decision took place in the Senate on the day before, that my friend which I did, that there was no necessity for a reference to a committee. I still retain that opinion. I think the Senate is entirely competent, without the aid of a committee, to decide this question; and, so far as I can see, committee could not afford them any aid which individual members cannot in discussion upon this floor. I see no reason to suppose that this is not the true state of the case. But, at the same time, this is a very important by taking into consideration the credentials read in behalf matter. It is one which should be fully investigated, and of Mr. Meriwether at the last session of Congress, and think gentlemen should have an opportunity of looking into it and preparing for discussion, in order that their opinions may be finally made up. Therefore, if it meets the approbation of the Senate, I would suggest, and with their concurrence would move, that we postpone the fur-ther consideration of this subject until Monday next. Let us take it up then and decide and finish it. I see no necessity for the interposition of a committee, and I am very sure that we cannot decide a part of the question without deciding the whole.

Mr. TOUCEY. I hope the course which has been suggested by the honorable Senator from North Carolina will be adopted. I find myself called upon to vote on the amendment proposed by his colleague, (Mr. MANGUN;) and I cannot discuss that amendment without discussing the merits of the whole question. I had determined to intimate no opinion, and to form no definite and final opinion until the subject had been considered. I discover that there is a disposition in the Senate to go into this discussion, and it has been gone into; and we have reached the point of voting, of acting, and the very vote we are ed the point of voting, of acting, and the very vote we are to give, in my judgment, settles the whole question. Before it is settled by a vote of the Senate, I for one shall be very glad of an opportunity to express my views office and admitting the claimant, would depart from the from Virginia.

Mr. CHASE. Mr. President, I would ask whether it to give, in my judgment, settles the whole question.

upon it.

Now, if it is understood that the question shall remain until Monday, that it shall then be discussed in the Senate, and that the members of this body shall themselves look into it and examine the precedents instead of having a committee to do it for them, I see no reason why the whole question may not as well be disposed of by the Senate on Monday as by referring it to a committee, that seeming to be the pleasure of the Senate. From the impossibility of discussing the question on one side and not discussing it on the other, partly discussing it and partly not discussing it, and still the debate going on, I think the only practicable mode is to open the subject and to go into it on Monday, when Senators shall be ready to vote finally upon every question that arises. I hope, there-fore, that course will be taken.

The PRESIDENT. Does the Senator from North Ca-

rolina move to postpone the further consideration of the resolution until Monday next?

Mr. BADGER. Yes, sir. Mr. BRIGHT. I shall vote for that motion; not, however, for the purpose of going into the discussion of the question on Monday next, but with the expectation that that time our committees will be organized, and that he subject will be referred to the Committee on the Ju-

main question. The motion to postpone was agreed to.

MONDAY, DECEMBER 13, 1852.

The above resolution and the proposed amendmen therete having been again taken up-After some conversation as to the best mode of mee g the question at issue—
Mr. Mangum consented to withdraw the amendment.

Mr. Jones, of Tennessee, then proposed to amend the olution of Mr. Gwin by striking out all after the word "resolved," and inserting the following:

Mr. CHASE. I understood him to say that he would fornia, in order to refer to the Judiciary Committee the are irregularities—if the returns are wrong—if they are of the Constitution. The whole doctrine, the whole scope, further inquiry, whether, under the existing commission, made upon facts which do not justify them—when those the whole intention of the Constitution shows that its frafurther inquiry, whether, under the existing commission, there is not now a Senator from Kentucky filling the only vacancy which has been made. The amendment would read thus:

"And that the commission of the Hon. David Meriwether, under which he was appointed a Senator from Kentucky, be referred to the same committee, with instructions to inquire and report whether he is a Senator under that commission; and, if so, when the same expires."

It seems to me, sir, that the Senate ought to decide with great deliberation upon the question now presented; that it would be immature to take the judgment of the Senate without a previous reference to a committee. It certainly would be a very unusual course, and the Senate might thus unfortunately commit themselves to a precedent which would prove injurious. The content of the senate might have but one representative on this date. senate without a previous reference to a committee. It cortainly would be a very unusual course, and the Senate might thus unfortunately commit themselves to a precedent which would prove injurious. The question that is pending is presented in a somewhat difficult and tangled form. The Senator from Kentucky, who resigned prospectively, contemplated that his resignation would create a vacancy; the Legislature that acted on that relay this resolution upon the table, and to ask, accordcreate a vacancy; the Legislature that acted on that resignation contemplated that the vacancy which they were to fill was a vacancy created by that resignation; yet it is manifest that an act of Providence disappointed the expectations of both, and created the only vacancy which has been created in the representation from Kentucky. I think it would be better to have the matter referred to a committee, and if the Senate think it better not to adopt the amendment of the Senator from Tennessee, I will offer the amendment of the Senator from Tennessee, I will offer the existence of a vacancy, let him make his objection, and have the reference made, and then bring what I have read as an amendment to the proposition of the Senator from California, and then the whole matter may be brought before the Judiciary Committee. Mr. UNDERWOOD. I regret that I was not here at

the commencement of the session, so that I could have witnessed and participated in the discussion which has been had on this, to me, very interesting subject. My absence was a necessary one, and now I present myself, perhaps, in the attitude of an intruder into a matter which has been discussed until gentlemen have formed their opinions upon the subject. But, sir, I owe it to the State of which I am now the sole representative to vindicate her proceedings, believing conscientiously as I do that they can be sustained by the Constitution of the country, by the rules of reason, and by the facts of the case. Sir, if you commit this case at all, are we to have a Mallory and Yulee case of it? Are we to wait until the end of this session before we get a report? And, during the the State that I represent to devolve upon my single shoulders, when I stand as much in need of assistance as any other member of this body? And am I to be de-prived of the aid, the consolation, and the advice to be derived from a colleague, whether he be the gentleman who occupied a seat on the other side of the chamber du-ring the last session, Mr. Meriwether, or the gentleman, my friend, immediately before me, Mr. Dixon a question of great importance to me, and to my State. Gentlemen of the Senate ought not to deprive any State of this Union of one of her representatives in this body, unless there is some imperative necessity for so doing. If this question assumes the importance which gentlemen have given to it, and it is to be referred to the Committee on the Judiciary, I ask members of the Senate, in con-sideration of all the other labors which that committee have to perform, when may we expect to have a report, and when will that report be finally acted upon; and what is the condition of Kentucky as regards her position in the Senate of the United States pending these delays? Sir, I humbly protest against that state of things. I think that Mr. Dixon makes out by the presentation of his cre-dentials a prima facie case; that you ought to administer to him the oath of office; that you ought to allow him to take his seat, and act with me as the representative of the State of Kentucky; and if there be any objections to his holding the office lying beyond and behind his commis-sion, you ought then to refer that question for investigation to a committee, and if the committee, upon finding the fact to be according to the allegation that he is not entitled to the seat, let them bring in a report which shall deprive him of the seat. That course was taken in the case of my friend from Illinois, (Mr. Shields,) and that is the ordinary course in cases of this sort.

I shall now proceed to show that the commission of Mr.

Dixon, which has been read, as I see from the report in the papers, makes a prima facie case, upon which you ought to administer the oath of office, and allow him to take his seat; and then, if he is not entitled to the seat, remove him, by instituting those proceedings which it has been usual to institute in other cases.

Mr. GWIN. If the Senator from Tennessee (Mr. Jones) will withdraw his amendment, to enable me to do so, will accept the amendment of the Senator from Virginia, (Mr. Masox.) Mr. Mason. I desire that my amendment may be

offered in connexion with the proposition of the Senator from California, and then the Senator from Tennessee can offer his amendment as a substitute for the whole. Mr. UNDERWOOD. It is a matter of indifference to me as to the manner in which the subject shall be presented, whether with or without the amendment of the Senator from Virginia. I am now proceeding to show, in the first instance, that there ought to be no reference at all until the gentleman before me (Mr. Dixon) is qualified. When I shall have shown, as I think I shall in the most clear and convincing manner, that there should be no re-ference until the oath of office is administered, I shall un-dertake to show that his title is so clear and conclusive that no one need ask for any reference at all, and that upon the principles of the Constitution, the facts and papers in the case, no reference ought to take place, and shall undertake-I hope I may say it without egotismto demonstrate and make as plain as any mathematical proposition can be made, if it were a question of figures. In the first place, I insist that Mr. Dixon ought to be qualified, he having made out a prima facie case, withou any reference. This depends entirely upon the records of the Senate. You must decide this first point or question the credentials read in behalf of Mr. Dixon at the present session. You must, by bringing these two documents in contrast, and considering the contents of both, decide whether the prima facic case is made out in behalf of Mr. that Mr. Meriwether was appointed to hold a seat in the Senate until the first Monday of September last. If you test the question upon the face of that document, it will be seen that he has no right to hold beyond the first Monday in September. Such is the result, if we are governed by the positive terms and words of the documen But gentlemen say-for I have read the debate, although I had not the pleasure of hearing it—in order to escape the inevitable conclusion forced upon them by the con-tents of the paper, that there are extrinsic facts to be considered by a committee. They say, we will not try the case upon the face of the paper, because there are extrinsic facts which we want to get at, and by these extrinsic facts we can show that the action of the Governor paper, the commission, which constitutes in all cases the prima facie right and title in the case, to go behind it and prima facie right and title in the case, to go behind it and bring up extrinsic facts, which might show that the indi-vidual was not entitled to the seat? Why, sir, did you do that in the case of Mr. Shields? What was the extrinsic

fact which deprived him of his right to a seat? Alienage; not a constitutional residence in the country; not having a constitutional qualification to hold the seat. These were the facts extrinsic to the commission; they were facts which, when brought before the Senate and established, would and did vacate that commission. But did you wait in that case to get at the facts? No, sir; you allowed the qualification to take place under the mmission; you tried the case in its prima facie aspect, looking at the face of the paper, and you withheld any thing further until the facts were fully reported to you Why not do the same thing here? Why refer this to a committee to bring up the establishment of a fact extrinsic to the record, and that fact in relation to a commission which, according to its own face, has expired, which is now a dead letter, because of the lapse of time which brought it to an end. This is new ground for the Senate to take: it is a position entirely new to me. You are not trying the case, as you always should, upon its prima facie aspect, tested

diciary, where I think it ought to go, so that we may have by the language and meaning of the commissions; but a report from it before we are called upon to vote on the and saying, not that the paper shows that Mr. Meriwe-ther, who was qualified at the last session, has any right, but that there are facts existing extrinsic to that paper. which can be brought to the attention of the comwhich will show that the Governor of Kentucky did wrong in limiting Mr. Meriwether's appointment. I say that the Senate ought not to listen to such allegations, but, on the contrary, they should take the paper as it stands; and doing so, they will see it is now inope-rative; it is dead; that the time for which the gentleman was appointed has passed by and gone forever.

In the next place it will be seen that Mr. Dixon pre-sents, under the seal of my State, under the signature

made upon facts which do not justify them—when those facts are made to appear upon investigation you get clear of the prima facie case, and set it aside. I hold that you of the prima face case, and set it aside. I hold that you are sacrificing the rights of my friend and of my State by delaying his qualification, by refusing to him the right of participating in the debates of this body, and by refusing to give Kentucky but one vote here in all the interesting questions that may come before you from the present time until the end of the session. Nay, you may not decide the question, if it is referred to a committee, during the session, and you may make my friend come again at the next session, and present his paper.

or denies the existence of a vacancy, let him make his objection, and have the reference made, and then bring up the facts in the ordinary manner. That would be dealing out equal justice, as in the case of Mr. Shields and that of Mr. Mallory and others, which constitute precedents worthy to be followed by the Senate.

I hope now to be indulged in presenting something a little more serious than any thing I have yet advanced. I am laboring under a hoarseness, sir, but I will perform my task as well as I can. Mr. President, I have looked into the arguments upon this case with great anxiety. I mean, sir, that I have read the debate, and I think I perceive clearly the untenable nature of the grounds assumed by those who seem to have rejected the claim of Mr. Dixon and put forward the claim of Mr. Meriwether. I think that I can present the points of difference between the and understand exactly where the difference between the and understand exactly where the difference between the two views is to be found. If I understand the argument of those who oppose the qualification of Mr. Dixon and who wish the reference to take place, it is founded upon a view of this sort: that there was no vacancy in the office of Senator from Kentucky until Mr. Clay died; that then there became a vacancy by virtue and by reason of that death for the whole residue of the term of Mr. Clay; that that vacancy, thus occurring during the recess of the Legis-lature of Kentucky, could only be filled constitutionally by the Executive appointment; that the Executive hav-ing made the appointment of Mr. Meriwether, his term of service, under the Constitution, necessarily continues during the whole residue of Mr. Clay's term, unless su perseded by a legislative election to take place after the Executive appointment was made. I have read all these arguments with very great attention, and I have given to you the positions which have been taken, as I understand them, fully and fairly, without intending to evade any thing which has been urged; and if I cannot now show you from the Constitution, from reason, and from precedent, that these positions are not tenable, I will give up the case. First, as to the Constitution; what does it say? It provides that Senators shall be elected for a term of six years. It provides they shall be divided into three classes o that the term of one class shall expire in two years, so that the term of one class shall expire in two years, that of the second in four years, and that of the third in six years; so that one-third may be elected every two years. It then goes on to say that "if vacancies happen"—how? "By resignation, or otherwise," are the words of the Constitution. "If vacancies happen, by resignation or otherwise, during the recess of the Legis lature of any State, the Executive thereof may make inture of any State, the Executive thereof may make temporary appointments." It is "appointments," in the prural, not in the singular. He may make temporary appointments to fill any vacancy that may occur during the recess of the General Assembly. If the vacancy does not occur during the recess of the General Assembly, but while the General Assembly is in session, then, by a clear and direct inference from the Constitution, the Legislature and not the Executive is to fill that vacancy. These provisions supply the constitutional principles which are to regulate this matter; and we should look at these provisions of the Constitution, which I have recited substantially, if not literally, apply them to the facts in the case, and allow them to control, direct, and govern our judg-

The first thing to be inquired into is, whether a vacan cy has occurred, and, if so, when it happened. And here we come to a difference of views, to which I wish to call the attention of Senators. All admit that a vacancy has occurred. But when did that vacancy occur? When did becurred. But when did that vacancy occur? When did
it "happen," in the language of the Constitution? Gentlemen who differ with me say it happened upon the
death of Mr. Clay, and not before. I say it happened
upon the resignation of Mr. Clay. Which of us is right?
Look at the fact. If it happened upon the resignation of
Mr. Clay, the vacancy occurred in December, when the Legislature was in session. All these facts appear upon the papers, the documentary evidence upon which we are arguing upon the commission of Mr. Dixon. If the vacancy happened in December, when the Legislature was in session, I have already shown you by the terms of the Constitution that the Governmental and all the session of the constitution that the Governmental and all the sessions are session. Constitution that the Governor could not fill that vacancy ; that by the express language of the Constitution-for i sively by the Legislature. But if the vacancy occurred and there was but one vacancy, after the Legislature had adjourned, in the month of June last, on the 29th day, when Mr. Clay died, then I acknowledge that the Consti tution is equally clear and imperative that the vacancy may be filled by Executive appointment, and that Mr

Meriwether was properly appointed to fill it.

Let us take another step, and inquire what is a vacancy? That question has not been asked, nor have I seen it answered in the argument. It is a very important question to lead to a correct conclusion in this case. What is a vacancy? Give me the essence which constitutes a vacancy; let me know—in the nature of things, without regard to terms, or words, or expressions—what it is that constitutes a vacancy. I will undertake to tell you. It is leaving a portion of the term of six years, during which portion of time there is no officer, no person elected or appointed by the constitutional authorities to fill or exercise the functions of the office; that is a vacancy. If there be no portion of time in the whole term of six years destitute of an officer or person qualified to discharge the duties of the office, there is no vacancy. If, during the whole six years, there is always an officer ready to perform the functions devolving upon him by the office, ready to step forward and exercise his duty, and that officer has been constitutionally appointed, either by the Legislature or the Executive, there is no vacancy. A vacancy is a portion of the six years' term when there is no person qualified to discharge the functions of the office. Can anybody gainsay that position? It seems to me to be impossible to get around the definition which I give. I repeat, if there be an officer qualified to discharge the dustice and approximately the functions of the control of the repeat, if there be an omeer quanted to discharge the du-ties and exercise the functions of the office, always ready, always appointed, always under commission, there is no vacancy. If there be a portion of time when there is no such person provided, either by the Executive or the Le-gislature, to perform the functions of the office, there is

vacancy. Under that definition of a vacancy, let me ask you what was the condition of things when Mr. Clay, by his letter of resignation, written in December last-I do not care in what words that letter is couched-informed the In what words that letter is couched—informed the Legislature that he would not discharge the functions and duties of a Senator from and after the first Monday of September? What was the condition of things in regard to the residue of the full six years for which he was elected? The very condition of my definition presents itself. Here was a portion of the six years during which there was no officer provided in any shape or way, constitutional or otherwise, who could step in and perform those functions from the first Monday of September to the end of the term. There was, then, a vacancy for that time, unless you can get clear of it in one way; and I will attempt to show you how the attempt to get clear of it is made, and will show you its fallacy. It is said that when Mr. Clay informed the Legislature of Kentucky that he would not discharge the duties of the office beyond the first Monday of September, that was a prospective declaration of his intention. They make it not an obligatory act upon him -not "an executed deed," to borrow the language of the Senator from South Carolina, (Mr. BUTLER.) whose speech read with great pleasure, and who seems to me to have had a clear conception, while he delivered it, of the reasons, the nature of the facts, and the essence of things as any body until after his death. I say, not so. When he sons, the nature of the facts, and the essence of things as I am endeavoring to present them to the consideration of the Senate. They attempt to get clear of it by saying that there was no vacancy, because this was a thing to take effect in futuro, and, being so, it did not make a vacancy from the first of September to the end of the term, but left it to occur, provided Mr. Clay lived till the first of September.

any body until after his death. I say, not so. When he resigned, to take effect on the first Monday in September, and declared that he would not serve as Senator after that time, that very fact made the vacancy, and the Legislature had as much right to proceed and make an appointment for the remainder of the term as they have to fill a new term.

But I have another and a stronger case to present. I

There is the turning point upon this branch of the ar

the whole intention of the Constitution shows that its fra-mers never intended to allow a legislative interregnum; and the very fact that the Governors of the States are per-mitted to make "temporary appointments," in the lan-guage of the Constitution, shows that the framers of that instrument regarded it as a matter of some importance that all the States should be fully represented in this body. In order, therefore, to prevent a legislative interregnum, they gave the States facilities in every possible shape to be represented here. be represented here.

Now, if any Senator desires to change his position and

come a Cabinet officer, carrying out this broad object of the Constitution, he may give notice of it in advance to the Executive or the Legislature of his State, so as to give them time to have a successor here on the 4th of March, prepared to go into an Executive session. There is reason in all that. We may want to make a lieutenant general of a Senator; we may want to make foreign am-bassadors of Senators; we may want to make judges of them; we may want to confer upon them all the offices which a citizen can hold, unless such offices as have been created or the emoluments thereof increased during their Senatorial term, which they are prohibited by the Constitution from holding. In all these cases it may be wisdom to allow the selection and to let a Senator prospec-tively fix the day for his resignation, and notify the con-stituted authorities of his State that on that day he will resign; that he will no longer hold the office of a Senator, and thus allow those constituted authorities to have his successor ready at the moment he goes out, so as to give the State a full representation. The whole system works well. It works admirably, under this view of the Constitution. It is a reasonable doctrine and a reasonable system. The reverse of it is unreasonable. verse is a fallacious doctrine. It necessarily produces an interregnum in the Senate. It necessarily leaves a por-tion of the term—which is against the whole scope of the Constitution-when States are not fully represented in the Senate. The doctrine upon which we have been acting from the foundation of the Government up to the present time is that there should be no interregnum. It is the doctrine which all the precedents sustain.

I will not detain you by referring to the case which my

friend (Mr. Jones, of Tennessee) referred to the othe day, to show that these prospective resignations are obli-gatory upon the Senator who makes them as well as upon all the functionaries of the Government. That was decided in the case of Jesse Bledsoe, from my own State.' It occurred some forty years ago. He resigned prospec-tively. He then wanted to know of the Senate whether he could not resume the functions of the office after the resignation. The Senate determined that he could not; that, like an executed deed, his resignation estopped him from claiming the residue of the term; and that has been

from claiming the residue of the term; and that has been the law of the Senate ever since.

Suppose Mr. Clay had lived after the first Monday in September. That will test this question. Suppose that, instead of Mr. Dixon presenting himself, Mr. Clay had lived and come forward and claimed the seat after the first Monday of September. Could he have held it? No, not if the doctrine in the case of Bledsoe be the parlin-mentary law which you intend to enforce. You would have said to Mr. Clay, "You are estopped by your deed; you have resigned your office; and although you did it prospectively in December last, it is obligatory on you, and you cannot resume your office." The case would be much stronger if the proper constitutional authority of his State had filled prospectively the place which he had vacated. If it could be said that it was not obligatory said that it was not obligatory because it was prospective, that could not be said after the constituted authorities of the State had accepted the

resignation and acted upon it.

Now, sir, Kentucky has accepted the resignation of Mr Clay by her properly-constituted authorities; and after that acceptance she elected my friend, Mr. Dixon, to fill the vacancy from the first Monday of September; and when he presents himself, he is met by the argument that the prospective resignation of Mr. Clay was not effectual to create a vacancy, and that, there being no vacancy, his election was void. Mark you, if that resignation made a vacancy, the vacancy happened during the session of the Legislature, and nobody but the Legislature, as I have shown you from the Constitution, could fill it. The Legislature said there was a vacancy; the decision of the Senate in the case of Jesse Bledsoe said there was a va-cancy; and the Legislature, acting upon that decision, undertook to fill that vacancy by electing prospectively my friend, Mr. Dixon. Had they the right to do that? Gentlemen say that the Legislature had no such right that they could elect only after there was an actual termi-nation of the incumbent's holding office by death, by resignation, or by removal. There may be various ways of creating a vacancy.

Death creates it comstants; there is a vacancy from the time of the last breath. That is one way. There may be judgment of expulsion upon impeachment and trial. As soon as the judgment is rendered, the official life of the officer terminates, and there is a vacancy from that period. There may be a vacancy by abandonment, as where a man leaves the State which he was elected to represent. The time of the abandonment may be uncertain, but still an incumbent may vacate the office by abandonment. The Constitution provides the remedy for filling the office again, without regard to the manner or mode of creating the vacancy. The only thing necessary to be ascertained is, whether a vacancy exists; it is immaterial from what cause. The Constitution, however, expressly recognises the right of the incumbent to resign ; and it does not pro hibit a prospective resignation, or a resignation to take resigning a portion of the term and retaining a portion to a day fixed. In these respects the incumbent may fix his own time. But whatever portion of his term he does reown time. But whatever portion of his term he does resign he has no power to recall. Mr. Clay having resigned prospectively all of his term to run after the first Monday of September, it was a valid act, there being nothing to prohibit it; and hence a vacancy was created, and happened on the day of the delivery of his letter of resignation to the Legislature. Vacancies may be created in presenti or in futuro. I may hand my resignation to you, sir, put on my hat, and walk out of the Senate. That would be a present, instant resignation. Or, according to the authorities, and according to reason, I may say will resign a month hence, and give notice, so that my place may be filled. That is prospective; but it is equally a vacancy, whether it is created by my instantly walking out of the chamber, or whether I tell you that I intend to walk out a month hence, and notify the Governor or General Assembly of my State to provide for the event. The whole fallacy of the argument on the other side is, that they suppose there cannot be a vacancy created prospec tively. They suppose that there cannot be a vacancy be yond a given day, which the incumbent fixes, when he will retire from and surrender the functions of the office.

Now, it is the fact of fixing such a day, and notifying all
concerned that he will surrender the office upon its arrival, that renders vacant the residue of the term; and such vacancy exists before the day arrives, precisely as a va-cancy may exist, and would have existed, in the regular Senatorial term commencing on the 4th of March next, when my period of service ends, had it not already been

filled by the election of my successor.

Now, if a Senator can make a vacancy by putting a period to his own service, and saying, I will reserve so much time to serve, and beyond that I am out of office, t is as much a vacancy as if it was created by an instant withdrawal from the Senate. Surely, lawyers and Senators can perceive this. Sir, it is like conveying away an illustrate it-reserving a term-reserving, if you please, a year, and conveying away the residue. Suppose I held a lease of six years, the term for which a Senator is elected, I could surrender three years to the grantor, and retain three to myself. So a Senator elected for six years may surrender to the constituent and electing body, the Legislature, any portion of the six years by resignation. When such surrender is made, there is a vacancy to that extent. When Mr. Clay said, resign from the first Monday of September-when he said, I will not serve you after the first Monday of Sep-tember, it was like a conveyance of the residue of the term. He parted with it forever; but he retained to himself so much of the term as lasted up to the first Monday of September. He kept that, and he had a right to keep it; but the residue he could not keep, or reclaim, having transferred and surrendered it to the Legislature. It therefore became vacant—It was a positive vacancy thus created, which the Legislature had a

If I am right in this, it did not, as gentlemen suppose. require the death of Mr. Clay to make a complete and full vacancy which might be filled by legislative appointment. The argument of the other side is, that there

shall serve here only to the 4th of March next. My sucof the Hon. Archibald Dixon was day elected by the Hon. Archibald Dixon was day elected by the grant and the Hon. Archibald Dixon was day elected him to a station in this body as a female of the Senate occasioned by the resignation of the Hon. Henry the Senate occasioned by the resignation of the Hon. Henry the Senate occasioned by the resignation of the Hon. Henry the Senate occasioned by the resignation of the Hon. Henry the Senate occasioned by the resignation of the Hon. Henry the Senate occasioned by the resignation of the Hon. Henry the Senate occasioned by the selected him to a station in this body as a selected him to a station in this body as a selected him to a station in this body as a senator from California, as I understand it, was only to refer to the Judicary Committee the credentials of Mr. Dixon, the position of the Senator from Kentucky to the senator is senator for the senator which Mr. Clay was elected. Take the two papers, and you find they harmonize. The one paper shows on the face that it is dead. The other shows that the term for which Mr. Clay was elected. Take the two papers, and you find they harmonize. The one paper shows on the face that it is dead. The other shows that the senator from Kentucky to fill the vacancy of the Senator from Kentucky to fill the vacancy of the senator is made of the senator is ma gument. If the gentlemen are wrong in that view, it ends the case. That they are wrong is just as plain as that

resignation, as I have proved, until the incumbent, the locum tenens, filling the reserved portion of the term, is out of the way; and he did not get out of the way until he died. If that be so, here is a locum tenens in my own person, holding until the 4th of March next. I am not out of the way; how, then, could the Legislature of my State provide any one to come here—as has been done in my case, and as has been done in fifty cases since the foundation of the Government—and take my place? There are very few instances, since the foundation of the Government, where the election of Senators has not taken place exactly in this way to fill vacancies supposed to Government, where the election of Senators has not taken place exactly in this way to fill vacancies supposed to exist in Senatorial terms beforethey commenced running.

My argument is, that when Mr. Clay said to the Legislature of the State of Kentucky, "I will serve as a Senator until the first Monday in September and no longer, I resign from that time," there was a vacancy created from that day, which Mr. Clay himself could not fill, as I have proved from the case of Bledsoe, which nobody had been prepared in any way to fill; and that that took place by virtue of the resignation sent forward in September. The virtue of the resignation sent forward in September. The Legislature undertook to fill that vacancy by the election of Mr. Dixon. Why do you not allow him to be qualified? f you do not do it, you violate all the analogies of the constitution which I have shown in the cases to which I

resignation, as I have proved, until the incumbent, the

have alluded. But I will bring forward a precedent for all this. I will show you what the Senate did in the case of Mr. Sevier. Mr. Sevier was elected one of the first Senators from Arkansas, after the admission of that State into the Union. He was elected in 1836. He came here, and, to practice, he and his colleague had to draw lots to know what class of Senators they should be assigned to. In that lottery Mr. Sevier drew the shortest term, which expired on the 4th of March, 1837; so that, having been lected in 1836, he occupied his seat but about a year. After he drew the short term, and before the period arrived at which he would have to retire, the Governor of his State, contemplating the vacancy which would happen after the 3d of March, 1837, appointed Mr. Sevier to fill the vacancy—that was a regular term, not a vacancy created in a portion of a term. The Governor appointed him to fill the vacancy of a full term. Here is the commission:

EXECUTIVE OFFICE, LITTLE ROCK, ARKANSAS

EXECUTIVE OFFICE, LITTLE ROCK, ARKANSAS.

State of Arkansas, ss:

Whereas a vacancy will occur in the Senate of the United States on the 3d day of March next, by the expiration of the term for which the Hon. Ambrose H. Sevier was elected a Senator from the State of Arkansas; and it being understood that the Senate of the United States is to be covered on or immediately after the 4th of March, and it being desirable that the State should be fully represented: therefore, I, Jas. S. Conway, Governor of said State, and during the recess of the General Assembly, have thought fit to appoint Ambrose H. Sevier to fill said vacancy.

H. Sevier to fill said vacancy.

Given under my hand and the seal of said State, at Little [L. s.] Rock, this 17th day of January, A. D. 1837. J. S. CONWAY. By the Governor:

R. A. WATKINS, Secretary of State.

Now, mark you, Mr. President, the term for which he was originally appointed did not expire until March 3, 1837. The Governor undertakes, in January, to appoint him for the next term, before the expiration of his first term. It was the regular expiration of a term by its own lapse; and the Governor, under the circumstances mentioned, appointed him to fill the vacancy thereafter to occur. These facts came here and were sanctioned by the Senate, after the report of a committee, which I shall read to show what the Senate said, under these facts, was the whole case. Here is the report made by Mr. Grundy:

whole case. Here is the report made by Mr. Grundy:

"At the last session of Congress the State of Arkansas was
admitted into the Union; and the Legislature of that State,
in the month of October, 1836, elected Ambrose H. Sevier and
William S. Fulton, Senators to represent the State in the Senate of the United States. It also appears that, upon the allotment of the said Arkansas Senators to their respective
classes, as required by the third section of the first article of
the Constitution, the said Ambrose H. Sevier was placed in the Constitution, the said Ambrose H. Sevier was placed in the class of Senators whose term of service expired on the 3d day of March, 1837, and that the Legislature of Arkansas day of March, 1837, and that the Legislature of Arkansas have had no opportunity of filling the vacancy, not having been in session since the fact that the vacancy would occur could have been known in that State. The Governor of the State of Arkansas, on the 17th day of January last, commissioned the said Sevier, as Senator, to fill the vacancy which would take place on the 3d of March. Upon this state of the case, the question is presented whether the said Ambrose H. Sevier is entitled to his seat under the appointment made by the Executive of the State of Arkansas. In looking into the practice of the Senate upon the subject of Executive appoint the Executive of the State of Arkansas. In looking into the practice of the Senate upon the subject of Executive appointments, no case like the present has been found. Several cases have occurred in which the Executives of different States, in anticipation of the expiration of the regular term of service, have appointed Senators, (the Legislatures not being in session,) and in all of these cases the Senators thus appointed were admitted to their seats: until the called session of the Senate in March, 1825, when Mr. Lanman, of Connecticut, whose term of service expired on the 3d of March, 1825, produced his credentials from the Governor of Connecticut, and duced his credentials from the Governor of Connecticut, and the Senate decided he was not entitled to his seat by a vote of 23 to 18.

"The decision seems to have been generally acquiesced in "The decision seems to have been generally acquiesced in since that time; nor is it intended by the committee to call its correctness in question. The principle asserted in that case is, that the Legislature of a State, by making elections themselves, shall provide for all vacancies which must occur at stated and known periods; and that the expiration of a regular term of service is not such a contingency as is embraced in the second section of the first article of the Constitution."

The case now under consideration, it may be said, differs from that. Wherein does it differ ! It was unnown to the Legislature of Arkansas what term Mi Sevier would draw in the lottery which had to take place. When they assembled here that fact was not known, and because it was unknown, it was not like the regular occurrence, every six years, of one of those constitutional vacancies to be filled by the Legislature. They there-fore say, because that fact did not appear, and was not known, that the Executive appointment made in January, when the office did not expire until March following, was a valid Executive appointment when the Legislature was not in session; but if the Legislature had been in session, and they had elected, knowing the fact, would not that have been a valid election? I use this case to show that there is nothing in the idea presented here that the Executive may not appoint, and make a valid appointment, prior to the expiration of the actual term of the incumbent then in office. Here he did appoint months before Mr. Sevier's term expired, and that appointment beforehand was regarded to be a valid and good appointment. I will not detain the Senate by referring at length to other cases; but here is Anderson's case, and Williams's case, and, I believe, one or two others, to which I might refer to show that the rule for-merly was, that the Executive might appoint to fill the regular occurrence of vacancies in the regular terms of the Senate. But that rule was set aside in Lanman's case in 1825, and since that time the decision in it has been acquiesced in; but in Sevier's case they did not acquiesce in the rule, because of the fact that the Legislature could not have known what class Mr. Sevier would draw; therefore they sanctioned the appointment from December until March, while Mr. Sevier was holding the regular commission conferred upon him by the Legislature. Now, when Mr. Clay resigned, and left a period of time, from the first Monday of September end of his term, which there was no one provided to the end of his term, which there was no one provided to fill by the Executive, or by Legislative appointment, was there not such a vacancy in that period which Mr. Clay could neither resume nor fill, and nobody else could fill, and therefore the Legislature, being in session, must

fill, and therefore the Legislature, being in session, must necessarily fill it? It seems to me to be so.

What else happens in this case? Mr. Clay reserved to himself, in this term of six years, the time up to the first Monday in September. I think he had a right to reserve it. He had the right to fill the office up to that time, according to his letter; but before that time he died, and here is presented another question. It produced another vacancy; but what vacancy did it produce? It produced a vacancy in the time of the lease which he had reserved to himself up to the first Monday of September. But what is the argument of the gentlemen on the other side? what is the argument of the gentlemen on the other side?
Ah, they say his death, instead of producing a vacancy merely in the time reserved to himself, produced a vacancy in the whole of the remainder of his term. There

is no reason in that. A vacancy had already been created by his resignation, after the first Monday of September. He had retained to himself the right to serve up to the first Monday of September. When he died before that time, a vacancy was created by his death only in the unexpired portion of the time which he had reserved.

I have admitted that when Mr. Clay died on the 29th

of June, having reserved to himself the right to act as Senator up to the first Monday in September, there was a vacancy created by his death; but what vacancy was it? I say a vacancy only in the unexpired term which Mr. Clay had reserved to himself. He had by his act of resignation parted with all the time beyond the first Monday of September. He had made that a vacancy. He could not fill it. Nobody could fill it without an appointment or an election; and the Legislature did elecbefore his death a person to fill that vacancy. The Legislature accepted the time which Mr. Clay threw back upon them, and they proceeded, by the election of Mr.
Dixon, to appoint a person to fill the vacancy. But there
was a part of the term which he reserved to himself, unexpired; and he died before he had served out that re-